(1881) 57 Iowa 613. *Perry's Case* (1846) 3 Grat. 632 and *Bush* v. *Commonwealth* (1882) 80 Ky. 244, cited by the court in the principal case as supporting its decision, decided only that under the constitutions of Virginia and Kentucky religious belief was not a ground of incompetency. The question of credibility did not arise.

A NEW PHASE OF THE ELEVATED RAILROAD LITIGATION.—Again the "Elevated Railroad Cases" have been brought into prominence by the advent of a new question, at once important and interesting, marking a last effort of the company to halt the litigation of damage suits. The plaintiff, an abutting owner on Sixth Avenue, brought the usual action for the infringement of his easements of light, air and access. The defendant company answered that by the continuous operation of its road since 1879 it had acquired a prescriptive right to maintain it in the future without liability. To rebut this evidence the plaintiff then proved that the company had made a voluntary settlement with many of the abutting owners; had instituted condemnation proceedings against others and had petitioned for a reduction of its franchise tax on the ground that there were claims to the amount of $8,000,000 yet unsettled. All this evidence, the plaintiff alleged, showed an admission of the title of the abutting owners to their easements and evinced an attitude of subordination to their rights. The court decided that these facts successfully met the defendant's claim of an adverse user of the easements in controversy. *Hindley* v. *Met. Ry. Co.*, (N. Y. Sup. Ct. 1903) 30 N. Y. L. J. 834. The company having at the outset erected and maintained its road in hostility to the abutting owners and in derogation of their rights, if they have maintained that attitude throughout the twenty years, it may be said, under New York decisions, that they have gained a prescriptive right. *Lewis* v. *R. R. Co.* (1900) 162 N. Y. 202. The defendant might more properly, however, have rested its defence upon the ground that the easements in question had been extinguished by reason of a twenty years' interruption under an adverse claim. *Woodruff* v. *Paddock* (1892) 130 N. Y. 618. The case would probably be decided in the same way, however, on either theory of defence. The analogy between adverse possession and prescription has to-day become practically complete; the twenty years' user prescribed by statute has been adopted by the courts as the prescriptive period, the idea of immemorial user having been obsolete for a century. *Campbell* v. *Wilson* (1803) 3 East. 292; *Nichols* v. *Wentworth* (1885) 100 N. Y. 455; Washburn on Easements, p. 125 et seq.

It remains then to consider the probative force of the plaintiff's evidence in rebuttal. The court took the view that the facts adduced tended to show that under the pressure of repeated adverse adjudications the company changed its attitude to one of subordination to and recognition of the abutting owner's rights, and that in voluntary settlements and the institution of condemnation pro-

ceedings there was an unmistakable recognition of the abutting owner's easements. The question then arises whether the fact of the defendant's recognition of the title of the majority of the owners is relevant to the issue with this particular plaintiff. The court here took the position that the franchise of the defendant must be regarded as a unit, that the rights of all the abutting owners were similar, that the essence of a prescriptive title being the intention of the claimant, any facts which tend to show the attitude of the defendant toward the plaintiff were relevant, and hence the evidence of voluntary settlements and condemnation proceedings, showing a recognition of the title of other owners similarly situated, produced an inference that the company occupied a subordinate position relative to this plaintiff. The relevancy of the above facts is questionable and the position of the court appears to be without authority. It would seem that if A is claiming a prescriptive way over lands belonging to X and Y respectively the mere admission of the title of X would not be relevant as to his adverse user as against Y. But to support the decision it is not necessary to rely on this evidence. The admission of the defendant that there are outstanding unsettled claims to the amount of $8,000,000 among which was the plaintiff's reveals an intention to adjust the claim of the plaintiff in recognition of his rights. "It is well known that a single lisp of acknowledgment by the defendant that he claims no title fastens a character upon his possession which makes it unavailable for ages." *Calvin* v. *Burnet* (1837) 17 Wend. 564.